



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT



ARNOLD
SCHWARZENEGGER
GOVERNOR

For Meeting Date: May 8, 2008

Agenda Item No. 5: Preliminary Report on the County of Siskiyou SMARA Program.

INTRODUCTION: Siskiyou County is one of the relatively larger surface mining counties in California. The State Mining and Geology Board (SMGB) received a public complaint, dated June 12, 2007, from an adjacent land owner for a surface mining operation located in Siskiyou County (County). It was alleged that the operation has been in a state of non-compliance with SMARA, and the County, acting as lead agency, had failed to adequately enforce SMARA and bring this site into compliance. At its April 10, 2008, regular business meeting, the SMGB directed the Executive Officer to perform a preliminary review of the County's SMARA program. A preliminary review of the current status for all surface mines located within the County's jurisdiction was performed and is summarized herein.

STATUTORY AUTHORITY: Pursuant to Public Resources Code (PRC) Section 2774.4(a), *"If the board finds that a lead agency either has (1) approved reclamation plans or financial assurances which are not consistent with this chapter, (2) failed to inspect or cause the inspection of surface mining operations as required by this chapter, (3) failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by this chapter, (4) failed to take appropriate enforcement actions as required by this chapter, (5) intentionally misrepresented the results of inspections required under this chapter, or (6) failed to submit information to the department as required by this chapter, the board shall exercise any of the powers of the lead agency under this chapter, except for permitting authority."*

BACKGROUND: During its regular business meeting held on January 11, 2007, the SMGB received from staff a preliminary report on the review of overall SMARA lead agency performance. The information presented was subsequently published on the SMGB's website as Information Report 2007-01 and titled *"Report on SMARA Lead Agency Performance"*.

Pursuant to the SMGB's Administrative Procedure No. PP96-02, when the SMGB receives a public complaint pertaining to the overall performance of a lead agency under the Surface Mining and Reclamation Act of 1975 (SMARA), a determination is quickly made as to whether immediate action is required. Immediate action is defined as a *"situation where a lead agency does not act to assure SMARA compliance and irreparable environmental damage or substantial endangerment to the public health appears imminent"*. When immediate action is not considered necessary, a technical review by the Department of



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Conservation, Office of Mine Reclamation (OMR) and/or discussion of the violation(s) at the SMGB's next Regular Business Meeting may be undertaken.

In the past, the SMGB has taken the opportunity to invite the lead agency to provide an overview of their SMARA program during this process. The SMGB has previously heard from other lead agencies, most recently, Riverside County, San Bernardino County, Santa Clara County and Sacramento County.

The SMGB received a written public complaint dated June 12, 2007, from an adjacent land owner for a surface mining operation known as Timberhitch Pits (CA Mine ID #91-47-0055) located in Siskiyou County. It was alleged that the operation has been in a state of non-compliance with SMARA, and the County acting as lead agency has failed to adequately enforce SMARA and bring this site into compliance.

The SMGB's office was informed that a representative of the County would not be available to provide a synopsis of the County's SMARA program for the SMGB's March 13 and April 10, 2008, regular business meetings due to budget constraints,. At its April 10, 2008, regular business meeting, the SMGB directed the Executive Officer to perform a preliminary review of the County's SMARA program.

ANALYSIS: Siskiyou County is one of the relatively larger surface mining counties in California. In review of the OMR SMARA database, materials produced include sand and gravel, rocks, cinders, bituminous rock, pumice, dimension stone and gold (placer and lode). Based on information provided by OMR, the County has about 43 mines within its jurisdiction, of which 34 are currently active, four closed with no intent to resume, two newly permitted, and three noted as idle.

As reported in the SMGB's Information Report 2007-01, as of 2005, about 75 percent of the surface mines within the County's jurisdiction were inspected, and about 29 percent of the financial assurances reviewed. As of 2006, about 98 percent of the surface mines had been inspected, with only 19 percent of the sites having had their financial assurances updated.

A preliminary review of the current status for all surface mines located within the County's jurisdiction was performed. Notably, certain parameters indicative of overall SMARA lead agency performance were evaluated. These parameters reflect upon those minimal activities required by all SMARA lead agencies such as conduct of inspections at least once each calendar year, review and adjustment of financial assurance cost estimates, and enforcement actions. In addition, certain substantial deviations from the approved reclamation plan, and those mines initially reported as idle and have since become abandoned, whether that was the operator's intent or not (i.e., no Interim Management Plan (IMP) in place), were also noted. In addition, the average remediation cost per disturbed



acre was evaluated to serve as a general indicator as to whether such costs are reasonable or otherwise significantly lower than amounts established elsewhere throughout the state.

SMARA Mine Inspections: Pursuant to PRC Section 2774(b), SMARA requires that all surface mines be inspected at least once each calendar year. For year 2007, a total of 23 surface mine sites or 53 percent, of all sites within the County required inspection, but were not performed.

Financial Assurance Annual Review and Adjustment: Pursuant to PRC Section 2773.1(a)(3) SMARA requires that the financial assurance cost estimate for all surface mining operations be reviewed and adjusted annually, as appropriate. For year 2007, a total of 41 surface mine sites, or 95 percent of all sites within the County, required their financial assurance cost estimates reviewed and adjusted, but were not performed.

SMARA Inspection and Financial Assurance Review and Adjustment: A total of 22 surface mine sites, or 51 percent of the surface mine sites within the County, require both an inspection and financial assurance cost estimate review and adjustment for year 2007, but were not performed.

Reclamation Cost per Disturbed Acre: Financial assurance amounts vary from as low as \$1,000 to \$64,543. The financial assurance amount per disturbed acre ranged from \$192.30 to \$10,756.00. Excluding four specific sites where the financial assurance amount were significantly larger than what was deemed adequate (i.e., reflective of financial assurance amount for total reclamation costs in lieu of an amount solely for disturbed acreage), the upper range is on the order of \$5,492.25, with an average amount on the order of approximately \$1779.62 per acre. Including all 34 sites where both an approved financial assurance amount and amount of disturbed acreage was reported, the average cost for reclamation of disturbed acreage was \$2,698.17. OMR has historically used \$5,000 per acre as a general and reasonable cost for reclamation of land disturbed by surface mining with a proposed end use as open space.

Enforcement: A preliminary evaluation of enforcement related activities was reviewed in regards to off-site encroachment beyond the approved reclamation plan boundary, and commencement of reclamation in situations where a mine characterized as idle became abandoned since no IMP was submitted by the operator and subsequently approved by the County in a timely manner.

Off-site Encroachment from the Approved Reclamation Plan Mining Footprint:
Seven out of 43 surface mining operations (16 percent) have reported disturbed acreage in excess of the amount of acreage set forth in their respective approved reclamation plan. Overall, about 68.879 acres outside the approved

reclamation plan footprint for seven sites are reported as disturbed. These surface mining operations, and associated disturbed and approved acreage, are:

- Hart Quarry (CA Mine ID #91-47-0001) reports 30 disturbed acres out of an approved 7 acres.
- Wolford Pit (CA Mine ID #91-47-0005) reports 9.25 acres out of an approved 7.8 acres.
- Yreka Transit Mix, Inc. (CA Mine ID #91-47-0009) reports 40 disturbed acres out of an approved 35 acres.
- Hopkins Pit (CA Mine ID #91-47-0019) reports 10 disturbed acres out of an approved 7.9 acres.
- Menne Pit (CA Mine ID #91-47-0033) reports 22 disturbed acres out of an approved 4 acres.
- M1 South Pit (CA Mine ID #91-47-0039) reports 2.24 disturbed acres out of 2 approved acres.
- Soda Springs Quarry (CA Mine ID #91-47-0061) reports 30 disturbed acres out of 10.90 approved acres.

Idle Mines: Three mines are noted as idle.

- Silva Quarry (CA Mine ID #91-47-0002) was idle as of December 1, 2002, and subsequently certified reclaimed by the County in December 3, 2004.
- The Kidder Creek Mine (CA Mine ID #91-47-0018) encompasses a reported 5 acres, and was reported as idle on December 12, 2001. The reclamation plan and financial assurance amount is noted as pending. This mine is characterized as a streambed mining operation. There is no IMP in place, reclamation is noted as not started, and the site is now deemed abandoned.
- Timberhitch Pits (CA Mine ID #91-47-0055) encompasses a reported 5 acres, and is reported as idle since September 15, 2002. The reclamation plan was approved on March 3, 1993, with a financial assurance instrument established for the amount of \$2,600 on May 1, 2002, and last reviewed by the County on



July 21, 2006. There is no IMP in place, and the site is now deemed abandoned.

AB 3098 Status: OMR periodically publishes a list of mines regulated under SMARA that meet provisions set forth under PRC Section 2717(b). This list is generally referred to as the AB 3098 List, in reference to the 1992 legislation that established it. Sections 10295.5 and 20676 of the Public Contract Code preclude mining operations that are not on the AB 3098 List from selling sand, gravel, aggregates or other mined materials to state or local agencies. For OMR to place a mining operation on the AB 3098 List, the surface mining operation must meet all of the following conditions:

- The operation has an approved reclamation plan;
- The operation has an approved financial assurance;
- The operation has filed its annual report;
- The operation has paid its reporting fee; and
- The operation has had its annual inspection by the lead agency which reflects the operation is in full compliance with the law.

The surface mining operation may be on the AB 3098 List if it has a pending appeal with the SMGB regarding its reclamation plan or financial assurance, provided its appeal has not been pending for more than 180 days.

The number of surface mining operations on or off the AB 3098 list can be indicative of overall site compliance. Thirty percent, or 13 surface mining operations, are not listed, and thus, are deficient in one or more of the conditions outlined above. A total of 30 surface mine sites, or 70 percent of all sites within the County, are listed on the AB 3098 list.

Comparison with Other Lead Agencies: As noted in the SMGB's Information Report 2007-01 pertaining to SMARA lead agency performance, it was noted, based on 2005 data, that statewide performance of lead agencies in the area of performing inspections of surface mine sites within their respective jurisdiction, at least once each calendar year, is moderate (66-75 percent), with the overall quality of such inspections inferred to be poor. Lead agencies performance in the annual review and adjustment of financial assurances was poor averaging 29 percent, with 91 percent of the lead agencies performing below 50 percent. Furthermore, as of 2002, overall financial assurances were un-realistically low. Enforcement of SMARA in regards to enforcement of IMPs was deemed almost non-existent.

In regards to overall performance of the County as a SMARA lead agency in 2007 in comparison with other lead agencies, current evaluation indicates:

- The County is performing significantly below the state average in regards to inspections (53 percent of the sites within the County's jurisdiction in comparison to the state average of 66-75 percent as of 2005).
- The County is performing significantly below the state average in regards to annual review and adjustment of financial assurances (5 percent of the sites within the County's jurisdiction in comparison to the state average of 29 percent).
- An evaluation of the reclamation cost per acre of disturbed land as reported by the operators on their respective annual reports reveals un-realistically low numbers. This is reflective of inadequate review and adjustment of the financial assurance amount, albeit consistent with such evaluation of the cost per acre set aside for reclamation statewide.
- In regards to the County's efforts to enforce SMARA, two sites may be deemed abandoned since their IMPs were approved, and as of 2005, 20 percent of the sites within the County were noted as requiring IMPs.

FINDINGS: The following findings are offered:

- The County is performing significantly below the state average in regards to inspections (53 percent of the sites within the County's jurisdiction in comparison to the state average of 66-75 percent as of 2005).
- The County is performing significantly below the state average in regards to annual review and adjustment of financial assurances (5 percent of the sites within the County's jurisdiction in comparison to the state average of 29 percent).
- A total of 22 surface mine sites, or 51 percent of the surface mine sites within the County, require both an inspection and financial assurance cost estimate review and adjustment for year 2007.
- An evaluation of the reclamation cost per acre of disturbed land as reported by the operators on their respective annual reports reveals un-realistically low numbers. This is reflective of inadequate review and adjustment of the financial assurance amount, albeit consistent with such evaluation of the cost per acre set aside for reclamation statewide.
- In regards to the County's efforts to enforce SMARA, 1) seven out of 43 surface mining operations (16 percent) have reported disturbed acreage in excess of



the amount of acreage set forth in their respective approved reclamation plan, 2) two sites may be deemed abandoned since their IMPs were approved, and 3) as of 2005, 20 percent of the sites within the County were noted as requiring IMPs.

- The number of surface mining operations on or off the AB 3098 list can be indicative of overall site compliance. Thirty percent, or 13 surface mining operations, are not listed, and thus, are deficient in one or more of the conditions required to be on the AB 3098 List.

EXECUTIVE OFFICER'S RECOMMENDATION: The aforementioned summary is for the SMGB's information, and no specific recommendations are being considered by the Executive Officer at this time. The Executive Officer, on behalf of the SMGB, has extended on three occasions an invitation to the County to provide the SMGB an overview of its SMARA program, and efforts being undertaken by the County to improve its overall performance. Due to budgetary constraints, the County has not accepted such invitation. A SMARA lead agency need only to fail in one of the six conditions set forth pursuant to PRC Section 2774.4(a), for the SMGB to consider commencement of the administrative process toward assumption of the lead agency's SMARA responsibilities and obligations, excluding permitting authority.

SUGGESTED MOTION LANGUAGE: The SMGB may consider the following motion language:

[Should the SMGB determine that the County is making significant progress, but certain deficiencies and violations remain uncorrected, the following motion can be considered]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer's Report, find that the County has made a good faith effort in fulfilling its responsibilities and obligations as a Lead Agency under SMARA, and that the Board continue to monitor the County's progress.

[or]

[Should the SMGB determine that deficiencies and violations remain uncorrected and the County is failing to make progress, the following motion can be considered]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer's Report, direct the Executive Officer to issue a 45-Day Notice to Correct Deficiencies to Siskiyou County pursuant to Public Resources Code Section 2774.4(a)(c).

Respectfully submitted:

Stephen M. Testa
Executive Officer